IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION

SOUTHERN DIVISION	
No. 7:08-CV-191-H	
C. JOHNSON SHEFFIELD CPA, PC; C. JOHNSON SHEFFIELD and wife, EMILY F. SHEFFIELD D/B/A PAPE ENTERPRISE,)))
Plaintiffs,)
v.) REVISED) MEMORANDUM AND) RECOMMENDATION
OHIO CASUALTY GROUP,)
Defendant.)

This matter is before the Court on Defendant's Motion to Dismiss [DE-9] and Plaintiffs' response [DE-13], which were referred to the undersigned for a Memorandum and Recommendation. This Court, on March 9, 2009, entered a Consent Order granting Plaintiffs leave to amend their Complaint [DE-20], which appears to moot Defendant's Motion to Dismiss the initial complaint. Accordingly, the Court **RECOMMENDS** that Defendant's Motion to Dismiss [DE-9] be **DENIED**.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have ten (10) days from the date of receipt to file written objections. Failure to file timely written objections shall bar an aggrieved party from receiving a *de novo* review by the District Court on an issue covered in the Memorandum and, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions not objected to, and accepted by, the District Court.

This <u>13</u> day of March, 2009.

DAVID W. DANIEL United States Magistrate Judge